

06-175-260-JLA

Affidavit Of Thomas Chevalier

I, Thomas Chevalier, on oath depose and state that:

1. I am a police officer with the town of Barnstable and I have been so employed for approximately 18 years. I have been deputized as a Task Force Agent with the Drug Enforcement Administration ("DEA") and I have been assigned to DEA's office in Cape Cod for approximately one year. I have received basic and periodic in-service training as a police officer as well as a narcotics training course sponsored by the Massachusetts Criminal Justice Training Council. I attended a DEA two-week narcotics training course in March 2006. During my career, I have been involved in numerous narcotics investigations, arrests, and cases involving controlled purchases of narcotics, use of cooperators, physical surveillances, execution of search warrants, and wiretaps. As such, I have become familiar with the techniques commonly employed to investigate such cases and with the methods used by drug dealers to avoid detection by law enforcement and to distribute drugs.

2. I am submitting this affidavit in support of a criminal complaint charging Frank Fagone, Joseph Fagone, and Maria Mathews with conspiring to distribute, and to possess with intent to distribute, heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 846. Since this affidavit is being submitted for the limited purpose of establishing probable cause to believe that Frank Fagone, Joseph Fagone, and Maria Mathews have committed a violation of 21 U.S.C. § 846, I have not included each and every fact known to me concerning this investigation. The facts contained in this affidavit are based on my personal knowledge as well as the knowledge of federal agents and local police officers participating in this investigation and information from databases available to law enforcement.

Background Of Defendants

3. Frank Fagone was born in 1983 and he is currently 22 years old. During this investigation, Fagone took the lead role in negotiating drug transactions with an undercover agent and in carrying out the drug deals. During this investigation, based on surveillance observations, I believe that Fagone was residing in various motels in Barnstable and Yarmouth.

4. According to records maintained by the Massachusetts Criminal History Systems Board ("CHSB"), Fagone has a juvenile and adult criminal history dating back to 1997. In 1998, Fagone was adjudicated delinquent in the Barnstable Juvenile Court for the crimes of breaking and entering in the night time and larceny

from a building (2 counts); he was sentenced to a one-year term of probation; he subsequently violated the terms of his probation and was committed to the Department of Youth Services in 1999. Fagone was also adjudicated delinquent in the Barnstable Juvenile Court for the crimes of receiving stolen property (1998), disturbing a school assembly (1998), breaking and entering a building in the daytime (1999), assault and battery (1999), attempt to commit a crime (1999), and vandalism (1999). Fagone was committed to the Department of Youth Services for these offenses as well.

5. As an adult, Frank Fagone has been charged on two occasions in the Barnstable District Court with being a fugitive from justice (2002 and 2003). In February 2004, Fagone was convicted in the Barnstable District Court of assault and battery by means of a dangerous weapon (BB gun) and sentenced to two years in the Barnstable House of Correction. In February 2004, in three separate cases, Fagone was convicted in the Barnstable District Court of possession of crack cocaine with intent to distribute, possession of cocaine with intent to distribute, and possession of crack cocaine with intent to distribute, and he was sentenced to concurrent terms of two years in the Barnstable House of Correction.

6. In October 2005, Frank Fagone was indicted in the Barnstable Superior Court for distribution of cocaine. I am aware that this offense relates to an alleged sale of cocaine to an undercover police officer on January 25, 2005. I am aware that Fagone was arrested for this offense on October 31, 2005 and that, at that time, Fagone stated that he was unemployed and that he resided at the Cavalier Motor Lodge on Route 28 in Yarmouth. I believe that this case is still pending for trial in the Barnstable Superior Court.

7. In January 2006, Frank Fagone was charged in the Orleans District Court with possession of a Class E controlled substance. I believe that this case is still pending for trial, with a next date of July 28, 2006, and that Fagone was on pretrial release during the offense conduct in this investigation.

8. In June 2006, Frank Fagone was convicted in the Barnstable District Court of false report of a crime (2 counts) and was sentenced to one year in the Barnstable House of Correction, 6 months to be served and the balance suspended for one year to June 2007. I believe that Fagone was serving the suspended portion of this sentence during the offense conduct in this investigation.

9. In May 2006, Frank Fagone was charged in the Barnstable Barnstable District Court with possession of cocaine with intent to distribute. I believe that this case is still pending for trial, with a next date of August 10, 2006 and that Fagone was on pretrial release during the offense conduct in this investigation.

10. Joseph Fagone was born in 1984 and he is currently 21 years old. He is Frank Fagone's brother. During this investigation, he assisted Frank Fagone in carrying out the drug deals. During this investigation, based on surveillance observations, I believe that Joseph Fagone was staying with his brother in different motels on Cape Cod.

11. According to CHSB records, Joseph Fagone has a juvenile and adult criminal history dating back to 1997. Joseph Fagone has been adjudicated delinquent in the Barnstable Juvenile Court for various crimes, including: shoplifting (1997); vandalism (1997); breaking and entering in the night time (2 counts) and larceny from a building (2 counts) (1997); assault and battery (1997); breaking and entering a building in the daytime (3 counts), larceny from a building, and receiving stolen property (1998); vandalism (1999); assault by means of a dangerous weapon (hammer) (1999); and vandalizing property and attempt to commit a crime (1999). Fagone has been committed to the Department of Youth Services on several occasions as a result of these convictions.

12. As an adult, Joseph Fagone was convicted in the Barnstable District Court in 2003 of disorderly conduct and disrupting court proceedings; he violated the terms of his probation and was sentenced in 2004 to 59 days in the Barnstable House of Correction.

13. In September 2003, Joseph Fagone was convicted in the Barnstable District Court of assault by means of a dangerous weapon (motor vehicle), resisting arrest, leaving the scene after causing property damage, and operating so as to endanger. He was sentenced to 30 days in the Barnstable House of Correction, suspended for one year to September 2004. In 2004, Fagone violated the terms of his probation and was sentenced to 30 days in the Barnstable House of Correction.

14. In April 2005, Joseph Fagone was convicted in the ~~Falmouth District Court of possession of cocaine with intent to~~ distribute and was sentenced to 6 months in the Barnstable House of Correction, suspended for one year to April 2006.

15. In December 2005, Joseph Fagone was convicted in the Barnstable District Court of assault and battery on a police officer (2 counts) and was sentenced to 7 months in the Barnstable House of Correction.

16. In May 2005, Joseph Fagone was indicted in the Barnstable Superior Court for the crimes of home invasion, armed robbery while masked, and intimidation. I believe that this case is still pending for trial, with a next date of July 27, 2006, and that Fagone was on pretrial release during the offense conduct in this investigation.

17. In May 2006, Joseph Fagone was charged in the Barnstable District Court with receiving stolen property, assault and battery on a police officer, and carrying a dangerous weapon (switchblade knife). I believe that this case is still pending for trial, with a next date of August 8, 2006, and that Fagone was on pretrial release during the offense conduct in this investigation.

18. Maria Mathews ("Mathews") was born in 1984 and she is currently 22 years old. She is Frank Fagone's girlfriend. During this investigation, she assisted Frank Fagone in carrying out the drug deals. During this investigation, based on surveillance observations, Mathews was staying with Frank Fagone at motels on Cape Cod.

19. According to CHSB records, Mathews has a juvenile and adult criminal record dating back to 1998. In April 2005, Mathews was charged in the Barnstable District Court with possession of marijuana with intent to distribute and conspiracy to violate the Controlled Substances Act. I am aware that Mathews was arrested for these offenses after a controlled delivery to her of a Federal Express package containing approximately 13 pounds of marijuana. I believe that this case is still pending for trial and that Mathews was on pretrial release in this case during the offense conduct in this investigation.

The Investigation

20. On July 13 and 14, 2006, a DEA undercover agent ("UCA") had two telephone conversations with Frank Fagone concerning a purchase of one ounce of heroin from Fagone. The UCA was posing ~~as a drug dealer from Nantucket and he made arrangements to meet~~ with Fagone in Hyannis near the Hy-Line Ferry terminal. During these conversations, Fagone identified himself as "Frank" and he offered to travel to Nantucket on July 13 to conduct the

transaction. The UCA declined the offer and agreed to meet with Fagone on July 14 in Hyannis.

21. On the afternoon of July 14, 2006, the UCA had telephone conversations with Frank Fagone, who instructed the UCA to meet him in a particular location and who stated that he would be a passenger in a black Chevrolet Suburban. During that afternoon, the UCA went to the agreed-upon location in Hyannis and was met there by a black Chevrolet Suburban that was being driven by Maria Mathews. Frank Fagone was sitting in the front passenger seat. The UCA entered the rear passenger compartment and observed that Joseph Fagone was sitting in the rear passenger seat. Frank Fagone then instructed "Maria" to drive to different locations.

22. After arriving at a nearby side street, Frank Fagone asked Mathews to get "that" and she reached under the driver's seat and retrieved a plastic bag wrapped in plastic. Mathews handed the bag to Fagone, who began to remove the plastic wrap while informing the UCA that he had wrapped the bag in plastic because he had left the heroin outside over night. Shortly thereafter, Joseph Fagone took possession of the bag and stated that he would unwrap it so that the UCA could check it out. Joseph Fagone asked Frank Fagone how much the UCA was supposed to be getting and Frank Fagone replied to "give him all of it."

23. After unwrapping the bag, Joseph Fagone handed it to the UCA, stating that the UCA could "try it or do whatever." The UCA handed \$4,000 in cash to Joseph Fagone. As Joseph Fagone counted the money, Frank Fagone directed Mathews to drive back to the location where they had picked up the UCA. During the drive, Frank Fagone stated that he could supply the UCA with both cocaine (either powder or crack) and heroin and that he wanted to do business with the UCA on a weekly basis. Joseph Fagone stated that he would come to Nantucket to provide the UCA with cocaine, crack cocaine, or heroin. After the vehicle arrived at the original location, the UCA exited the car, stating that he would call Frank Fagone in a few days.

24. This transaction was recorded, videotaped, and surveilled by various agents. I was one of the surveillance agents. After the transaction, I was present when a field test was performed on the substance purchased by the UCA. The field test came back positive for the presence of heroin. The UCA, other agents, and I inspected the substance and concluded that it appeared to be heroin based on appearance and consistency. The substance was sent to a DEA laboratory for further testing and a chemist has indicated that the substance is heroin, with a net

weight of 22.8 grams.

25. On July 20, 2006, the UCA had a recorded telephone conversation with Frank Fagone concerning a second purchase of heroin from Fagone. The UCA and Fagone to do a deal of "6 for 7" (i.e., 6 fingers of heroin, or approximately 60 grams, for \$7,000). When the UCA asked about "the hard stuff" (i.e., crack cocaine), Fagone stated that he had that too. Fagone stated that he would charge the UCA \$500 for "half an onion" or "half a rope of hard" (i.e., half an ounce of crack cocaine) although he stated that he expected the UCA to buy more than that. Fagone further stated that "if you buy 4 ½ ropes, which would be a big eight [i.e., an eighth of a kilogram or 125 grams], I'll give it to ya for 33 hundred [i.e., \$3,300]." Fagone stated that one ounce of crack cocaine would cost \$1,000 but that "once you go up [i.e., in quantity], you'll get a way better price [i.e., per ounce]." The UCA then agreed to purchase an ounce of crack cocaine for \$1,000 at the same time that he was purchasing the heroin. The UCA and Fagone agreed to meet at the same location in Hyannis on the afternoon of Friday, July 21, 2006.

26. On the afternoon of July 21, the UCA had recorded telephone conversations with Frank and Joseph Fagone to confirm the transaction. During these conversations, Frank and Joseph Fagone stated that they were still working on obtaining the crack cocaine. At one point, they stated that they had a sample of powder cocaine to give to the UCA for free. It was agreed that the UCA would meet them to purchase the heroin, to pick up the sample of powder cocaine, and to purchase the crack cocaine if they had it. Frank Fagone stated that they would be in a white Ford Taurus.

27. That afternoon, other agents and I went to the location in Hyannis where the UCA had been picked up on July 14. The surveillance agents (including me) observed a white Ford Taurus arrive at the location. This vehicle had been rented from a Hertz facility at the airport in Hyannis. Maria Mathews was driving the vehicle, Frank Fagone was in the front passenger seat, Joseph Fagone was in the rear passenger seat directly behind the driver, and a second female was in the rear passenger seat directly behind Frank Fagone. As officers approached the vehicle, Joseph Fagone exited the vehicle and then started running away. Joseph Fagone was observed throwing away an object as he ran away; he was eventually caught and arrested; I ~~retrieved the package, which was a plastic bag. The plastic bag~~ contained two separate plastic bags, one containing heroin and one containing cocaine. The substances were subsequently field-tested and came back as positive for heroin and cocaine.

Officers were able to contain the white Ford Taurus and arrest Frank Fagone and Maria Mathews. The other female, who was 16 years old, was detained and then released.

28. All three defendants were booked at the Barnstable Police Department. During booking, Frank Fagone stated that he resided at 240 Mitchell's Way in Hyannis; based on my knowledge as a police officer on Cape Cod, I believe that this address houses Fagone's ex-girlfriend with whom he has a child and that he does not actually live there. During booking, Joseph Fagone stated that he resided at 559 Main Street in Hyannis; based on my knowledge as a police officer on Cape Cod, I believe that this address houses his girlfriend and her mother and that he sometimes stays there. During booking, Mathews stated that she resided at 63 Brigantine Avenue in Marstons Mills.

Conclusion

29. Based on the foregoing, I believe that there is probable cause to believe that Frank Fagone, Joseph Fagone, and Maria Mathews conspired with each other to distribute, and to possess with intent to distribute, heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 846.


Thomas Chevalier
DEA Task Force Agent

Sworn to and signed before me this 22nd day of July 2006.


Joyce London
United States Magistrate Judge

